

# Sovereign Nations

NEWSLETTER OF TRIBAL SELF-GOVERNANCE

Aug./Sept.  
1996



*First lady Hillary Clinton at a "Get out the vote" rally with the girls from the campaign poster.*

## *Self-Governance and Politics*

**I**t's an election year. Signs are sprouting everywhere, speeches are being delivered and promises are being made. This year there is also something else that is noticeable: namely a lot of activity from Native Americans and Tribes. Amidst all of this, are the Self-Governance Tribes, who have been front-runners in the lead for more political activism among Tribes.

Many politicians are finally starting to pay attention to American Indian Tribes for three important reasons: 1) Get the vote out campaigns; 2) Money from Tribal gaming; 3) Self-Governance and Self-Determination efforts and the momentum it has created around leaders who promote Tribal sovereignty and rights.

There are many campaigns around the country to register more Native American voters. Native Vote '96 was organized as an effort to garner more registered Native American voters and has the support of the Democratic National Committee. It has spawned other Native voter registration groups like the one in South Dakota called "Lakota-Dakota Vote", which hopes to register 40,000 voters in South Dakota.

Votes aren't the only attraction politicians see in Native Americans. Increasingly, Tribes have become large campaign contributors. Many Tribes have formed political action committees, like the Five Civilized Tribes of Oklahoma or the Tribes of the Northwest. Some of the PACs have contributed as much as \$100,000 to various candidates or parties.

In the State of Washington, a group of Tribes, led by Self-Governance Tribal leaders, has formed a Political Action Committee called WI-PAC (Washington Indian Political Action Committee). The group will host many Candidate Forums for every position from local State representatives to State Governor. In addition, they are conducting Tribal Leaders' Forums to discuss the issues and the candidates. Each Tribe that donates funds to WI-PAC will have one vote in determining any WI-PAC positions and which candidates will receive WI-PAC donations.

At a recent Candidate's Forum, hosted by WI-PAC and held at the Tulalip Tribal Center in August, Lummi Chairman Henry Cagey said, "we know we can make a difference in voting. We know we can make a difference if we stick together." The importance of WI-PAC became apparent as a string of local and

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# BIA Proposes to Transfer Key Funds to TPA



**A**da Deer, Assistant Secretary - Indian Affairs, has proposed the permanent transfer of Contract Support Funds, Housing Improvement Program (HIP) funds, and Social Services Welfare Assistance Funds to each eligible Tribe's TPA (Tribal Priority Allocations) budget. Assistant Secretary Deer signed the Notice of Proposed Transfer of Funds to Tribal Priority Allocations on August 23, 1996 and it appeared in the FEDERAL REGISTER on September 4, 1996.

The Notice to permanently transfer Contract Support, HIP, and General Assistance is a result of the Reorganization Task Force and the Congressional directive contained in House Report Language 103-551. The

Self-Governance Tribes have long argued for the permanent or "base budget" transfer of these funds. The Self-Governance Tribes have always felt they can better manage their governments if they receive a consistent amount of funds each year. Under the new proposal, instead of fluctuating amounts each year, an initial amount of funds will be identified for each eligible Tribe, including Self-Governance Tribes, which will then recur annually in the Tribe's TPA or base budget.

The stumbling block in the past has been the lack of agreement over the funding distribution methodologies. Under the current proposal, the BIA has proposed two alternative distribution

methods for each program. The proposals are:

## Social Services Welfare Assistance

1. Three-year Average - Each Tribe would receive the average of Welfare Assistance funds distributed to them from 1993-1995. A Tribe without a three-year history would receive funds based on a certified caseload projection.

2. Base plus Percentage of Service Population - Each Tribe would receive a base amount of \$20,000 plus a percentage of the remaining funds based on the total population within the BIA Total Category in the 1993 Bureau of

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## Self-Governance and Politics

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state-wide candidates paraded before over 100 Tribal leaders and representatives to give their positions and garner the Native American vote.

The strong interest in Indian Country to become politically active has created many Native American candidates. At the WI-PAC Forum, Joe Bowen, an Upper Skagit Tribal member and candidate for Congress, got a chuckle from the audience when he said, "Everyone wants to talk about their roots in the community. Well, my family has been here for 15-20,000 years."

One of things that is becoming clearer and clearer to all of the Tribes, is that Native Americans need to look at each candidate and their positions instead of necessarily sticking to one single party. While the values and positions of the Democratic Party seem to better suit Tribes, it is also true that many Republican Senators and Presidents have been very favorable to Tribes. Senator McCain has been the key behind Self-Governance legislation and it should not be forgotten that President Nixon originally signed the Indian and Education Assistance Act.

On several issues the Republicans, at the national level, have been helpful to Tribes because

of the joint distrust of the IHS and BIA and the philosophy that local entities; i.e., American Indian Tribes, can better govern themselves than a federal bureaucracy. Senator Slade Gorton, with his long history of hatred over fishing rights and Tribal rights in general, is the lone Republican exception. On the other hand, Democratic governments at the State and local level tend to be much more favorable to Tribes than some of the Republicans. Consequently, not every Democrat is going to be the best candidate for the Tribes to support and not every Republican is going to be the one the Tribes want out of office. The complexity of Tribal issues dictates a candidate-by-candidate review to determine who would be the best Tribal advocate.



Chairman Henry Cagey presides over WI-PAC candidate forum at the Tulalip Tribal Center

Cherokee Nation Chief Joe Byrd summed it all up when he told a group at the Democratic Convention, "It's a good awakening for the Native Americans. We have always participated in the wars - the Korean War and World War II and the Vietnam War - but never really been active in the political sense. Now it's time for us to be active on both sides."



## Questions Continue To Be Raised Over Trust Evaluation Process



**P**ublic Law 103-413 contains a requirement that each annual funding agreement (AFA) include provisions to monitor trust functions performed by a Tribe under Self-Governance through a trust evaluation. Differences have emerged between representatives of the Department of the Interior and Tribal governments regarding what the trust evaluation process entails and how they are integrated into the Tribal/Federal relationship upon which Self-Governance is based.

Trust evaluations originated from the first Compacts of Self-Governance which were negotiated and went into effect in 1989. During the initial Self-Governance negotiations, Tribal and Federal negotiators agreed that annual "trust evaluations" would suffice for maintaining the United State's trust responsibility in light of the increased flexibility afforded to Tribes under Self-Governance.

Following the initial Compact provisions, Self-Governance Tribes, the BIA and the Office of Self-Governance (OSG) worked together to develop the trust evaluation process that was used for the first two years of Self-Governance. The process included a one-page trust questionnaire which was completed on-site by Tribal and Federal representatives. While the early trust evaluation process was considered by Tribal and Federal representatives as being adequate for ensuring that the United State's trust responsibilities were upheld, many Tribes expressed disappointment that it did not include a review of the retained and residual functions of the BIA.

In 1991, the Assistant Secretary of Indian Affairs created the Office of American Indian Trust (OAIT). As part of its functions, the OAIT was assigned the responsibility for coordinating the

annual Self-Governance trust evaluation. Representatives of the OAIT participated as observers in the annual process until the FY 1992 trust evaluations were completed.

In 1993, the OAIT assumed its coordinating role for the trust evaluations. At the time they also decided to modify the process developed earlier by Tribes, OSG and BIA, which was used in previous years. The new process included completing a pre-review questionnaire by Tribal program managers and another by Tribal Council members, an on-site trust evaluation and a post-evaluation review and approved process. Although the OAIT process was used in 1993, several Tribes objected to the new process because they did not have an opportunity to review and provide input into the process before it was implemented for Self-Governance programs. After a number of Tribes formally objected to the OAIT process at the Self-Governance Fall Conference in November 1994, a workgroup was formed to work with the OAIT and OSG to develop a mutually acceptable trust evaluation process.

In May, 1995, the Tribal trust evaluation workgroup formally submitted its recommendations at the 1995 Self-Governance Spring Conference where they were adopted and submitted to the Secretary of the Interior for consideration. Unfortunately, the Secretary's representatives have never responded to the Tribal recommendations.

At the Spring Self-Governance Conference held in Seattle in 1996, the OAIT again introduced another modified version of the trust evaluation process. At that time, several Tribes again objected to the process because they were not provided an opportunity to review

and provide input into the modified process.

Of the Tribes that raised concerns regarding the OAIT's new proposal, the Hoopa Tribe of California aggressively resisted the proposal. The Tribe's objections were based on a number of factors, including: 1) that it imposed additional requirements on the Tribe that were never negotiated, agreed to, or funded in its FY 1995 AFA; 2) that it increased the responsibilities on the Tribes beyond those which were required of the BIA when it operated the trust programs; 3) that it violated President Clinton's Executive Memorandum to Federal departments by creating unfunded mandate concerns; 4) that Tribes were not provided an opportunity to review and provide input into the OAIT's proposal; and 5) that it did not address the retained and residual functions of the BIA.

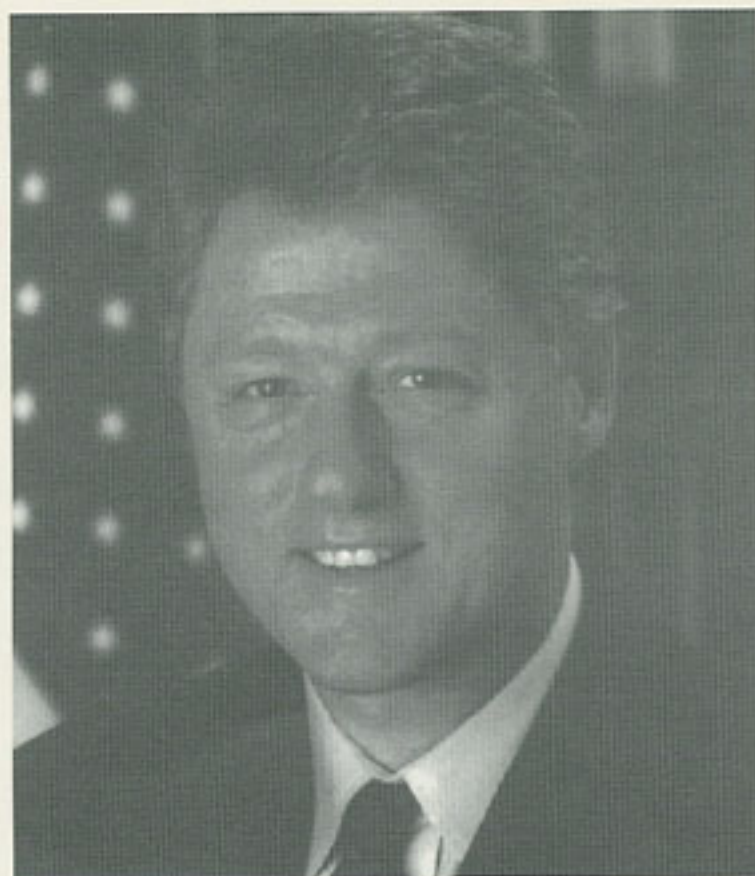
After a series of meetings between representatives of the Tribe, OSG, OAIT, BIA and the Self-Governance Policy Council, the parties agreed that the Tribe and Department would work together to design a Hoopa Tribe trust evaluation process that would meet the requirements of both the Department and the Tribe. Another meeting is scheduled for late September where the process is expected to be finalized.

The Hoopa Tribe also requested that the OAIT provide information which identifies the support statutes and regulations for their proposal. This information is of special interest to Self-Governance Tribes because of its significance to Tribes during the annual negotiation process. The Hoopa Tribe will distribute this information to all Self-Governance Tribes once it is made available. ◀



## Bill Clinton

### Democrat for President



President Clinton, along with Senator Dole, was given a set of questions regarding their positions around key issues of importance to Self-Governance Tribes. President Clinton elected not to answer the specific questions and instead forwarded a 23 page report titled "Two Years After the President's Meeting With Tribal Leaders - Annual Report of the Administration Working Group on American Indians and Alaska Natives", and a three-page "position paper" which was issued at the National Democratic Convention. Below is an edited synopsis of the main points of both papers, particularly those parts of the report which show a position President Clinton has or would take and those parts of the report which show actions by the President which will hopefully give the reader some insight into President Clinton's views and positions.

#### Federal Funding for Indian Programs

President Clinton's FY 1997 BIA proposal of \$1.782 billion is well above FY 1996 but only \$53 million above the actual FY 1995 level; which means the BIA budget, as proposed by President Clinton, would not keep pace with inflation over the last two years.

The proposed Clinton IHS budget, on the other hand, has seen an increase of about 9-10% per year during his

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administration. In addition, the President's report shows that more and more federal monies are going directly to Tribes at the local level via Self-Determination and Self-Governance.

*Editor's note - It should be pointed out that a Republican Senator is largely responsible for the large BIA cuts last year. However, President Clinton did, over Tribal leaders objections, reduce the federal employees of the BIA and IHS. Instead of allowing these funds to be used for Self-Determination or Self-Governance funds, they were transferred to the Department of Treasurer to offset the federal deficit.*

#### Advancing Self Governance and Self Determination

During President Clinton's administration, the number of BIA Self-Governance Tribes has risen to 53 and the BIA has, for the first time, identified each Tribe's share of federal funds if they elect to participate in the Self-Determination or Self-Governance process. In addition, the IHS, as a demonstration project, has entered into Self-Governance Compacts representing over 40% of all Tribes.

In addition, President Clinton became the first President to invite the leaders of all Federally recognized Tribes to a White House meeting. He has recognized 12 new Indian Tribes.

*Editor's note - While the directors of both the IHS and BIA have been supportive of the Self-Governance process, many leaders feel that many middle-level bureaucrats continue to fight the process and that the BIA could be downsizing and allowing new Self-Governance Tribes at a much faster pace.*

#### Advancing Tribal Sovereignty

President Clinton points out several efforts by his administration to advance Tribal sovereignty including:

- USDA Forest Service agreements with Southeast Alaska Tribes regarding government-to-government consultations.
- Agreements between Tribes and the departments of Energy and EPA.
- Administration's support of Department of Justice to continue litigation on behalf of Tribes against third parties, particularly in the area of sovereignty.
- Opposed Republican efforts to take away rights to protect children (Indian Child Welfare).

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# Bob Dole

## Republican for President



### Bob Dole believes the best government is local government.

*Editor's note - Self-Governance already forces the BIA and IHS to reorganize itself in order to fund Self-Governance Tribal shares. The question not answered is whether President Dole will pass the savings from the downsizing or reorganizing of the BIA and IHS to the Tribes or will these savings be used to balance the federal budget and reduce the federal deficit?*

### Respect Tribal Sovereignty and Encourage Tribal Responsibility

Bob Dole believes that Indian tribes have an inherent right to govern themselves. President Dole will strengthen local tribal governments control over Indian matters by diminishing the authority and role of Federal agencies like the BIA and IHS, and by removing the meddlesome layers of bureaucracy and paternalism within these Federal agencies that hobble Native American efforts to administer tribal governments and to build Indian reservation economies. Because Bob Dole believes tribal responsibility is the lifeblood of tribal sovereignty, he will work with tribal leaders to strengthen tribal governments and tribal courts so they protect and honor individual liberties, promote economic development, and build cooperative relations with their governmental neighbors. As President, Bob Dole will continue to urge tribal leaders to create a pro-business climate on Indian reservations that encourages free enterprise and invites entrepreneurs to build Indian reservation economies.

*Editor's note - Does diminishing the federal authority also mean diminishing the federal funds? Tribal sovereignty does not exist without the necessary funds to govern. Also, does Tribal sovereignty include a Tribe's right to exercise policy and regulations within their reservation boundaries, or does Bob Dole support Senator Gorton's extreme view of private property owner's rights over tribal sovereign governments?*

*Sovereign Nations recently submitted a list of questions for Senator Bob Dole regarding his positions on many Tribal issues. Like President Clinton, Senator Dole elected to submit a "position paper" which is reprinted verbatim.*

### Remove Federal Obstacles to Tribal Self-Governance and Self-Determination

Bob Dole believes the best government is local government. In applying this to Indian reservations and Alaska Native communities, President Dole will strengthen local tribal governments through effective implementation of Federal laws supporting Indian Self-Determination and Tribal Self-Governance policies.

### Empower Tribes to Reorganize the BIA and IHS

Bob Dole believes that Federal bureaucracies like the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) are too large, too costly, and too intrusive. As President, Bob Dole will empower Indian Tribes to have more say over where BIA and IHS funds should be spent, who should spend them, and on what priorities. As President, Bob Dole will call on Congress to enact legislation authorizing tribal governments to reorganize the BIA and IHS.

### Oppose New Federal Taxes on Tribal Governments

In 1995, Bob Dole joined with Senators John McCain, Pete Domenici, and Don Nickles to lead a successful fight against a Federal tax on tribal gaming revenues. Bob Dole has always maintained that no government should tax revenues of other governments without their consent. Because rights are accompanied by obligations and responsibilities, Indian tribes should continue to use Indian gaming revenues for governmental and public purposes.

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## Bill Clinton

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In addition, President Clinton fought off efforts to penalize Tribes (Lummi rider) for exercising their powers of Self-Governance. He also fought efforts which would allow States to tax governments on new trust lands.

*Editor's note - President Clinton should be applauded for his successful efforts in fighting the "Lummi Rider". However, it should be pointed out that many Republicans joined with the President to fight Senator Gorton's damaging proposals.*

## Advancing Indian Health

The Clinton Administration has supported many issues which have helped Tribal health programs such as: IHS/HCFA agreements to raise Medicaid funding to 100% for all Tribally operated, owned or leased facilities, and increases in water and waste facility funding. It is assumed the President would support the passage of permanent IHS Self-Governance legislation. Nearly half of the Tribes and Alaska native Tribes and villages currently participate in the IHS Self-Governance demonstration project. However, what is not as clear, is whether the President will continue to place IHS under the federal cuts in which savings go towards the deficit reduction and whether he will support the continued cuts in contract support costs associated with Self-Governance Tribal shares.

*Editor's note - Both candidates support permanent legislation; however, the success of the legislation, after passage, hinges on many crucial elements like staff reductions and contract support funds.*

## Enhancing Economic Development

President Clinton approved 145 Tribal-State Gaming Compacts and has supported many economic development initiatives.

*Editor's note - One of the glaring holes in the President's report is any significant statements regarding Indian gaming. He doesn't give his position on taxation of Tribal enterprises nor does he give a position on "means testing" of Tribes to determine their need for federal funding. He has stated in the past, his opposition to State taxes of Tribal enterprises, but what about federal taxes or "means testing." Both issues have been raised in Congress. In addition, the President doesn't state in his report any positions he has in regards to legislation which would effect the operation of Tribal gaming and the conflicts over gaming between Tribes and many of the States.*

## Bob Dole

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*Editor's note - Bob Dole should be applauded for successfully opposing Senator Gorton and his various proposals to take away Indian gaming funds. However, how far would President Dole support Tribal gaming and the onslaught of challenges by commercial gaming interest and many of the states in which Indian gaming resides? We hope he would continue to fight taxation proposals and would veto any laws which tax or "means test" Tribes to determine their level of federal funds received; or any laws which diminish the right of Tribes to conduct gaming enterprises.*

## Strengthen the Government-to-Government Relationship of the United States with each Indian Tribe

Some politicians talk about feeling your pain. Bob Dole wants to stop it. Instead of flying tribal leaders to "listening conferences" and photo opportunities, President Bob Dole will work productively with tribal leaders to uphold and preserve the unique, government-to-government relationship that exist between each Indian Tribe and the United States, consistent with the United States Constitution, treaties, laws and court decisions. President Dole will strengthen Federal-Indian policy, acting in partnership with Tribal governments.

*Editor's note - All sounds very good, but not sure what it translates into in terms of action or legislation. Will, for example, President Dole sign permanent Self-Governance legislation for the IHS?*

## Honor This Nation's Trust Obligations to Indian Tribes

Bob Dole believes that under the United States Constitution, our Nation is legally and morally obligated to honor the various Indian treaties as continuing obligations solemnly undertaken by the United States in exchange for land and peace. As President, Bob Dole will ensure that the money, land, water, and other resources which the United States holds in trust for Indians are well-managed, audited, and protected rather than neglected, lost or ruined. To the greatest extent possible, President Dole will transfer the management of these trust resources to each Tribal government which seeks that authority and responsibility.

*Editor's note - Bob Dole's support of treaties and a Tribe's option to manage their own resources is a welcome relief over some Senators like Slade Gorton who think that treaties are just "old pieces of paper."*





## User Population Workgroup Re-established

IHS Director Dr. Michael Trujillo recently announced the reformation of the User Population Workgroup which last met in the Spring of 1995. The group was originally formed to address the definition of User Population within IHS. This group developed a definition based on a facilities-based count versus the current residence-based count. Many Tribes complained, at that time, of any changes to the definition. While most Tribes believe their official IHS user population number to be inaccurate, many Tribes were not willing to drastically change the definition without further analysis; particularly if the new definition would shift funds from one size Tribe to another or one type of facility to another type.

The current User Population Workgroup will hold their first meeting in September in Albuquerque with the complete workgroup members to be named later.

## Dr. Trujillo Appoints Management Team Leaders For IHS Headquarters Restructuring

Dr. Trujillo, at the August 1, 1996 General Staff Meeting, announced the temporary appointment of management team leaders who will provide the leadership and direction for the three-office Headquarters restructuring model adopted by IHS. Dr. Richard Church will provide overall leadership for the restructuring process, while Dr. Robert Harry and Margo Kerrigan will serve as the management team leaders for the new Public Health Support Office, comprised of Office of Health Programs, Office of Planning, Evaluation and Legislation, and OEHE.

Robert McSwain and Phyllis Eddy will serve as the management team leaders for the new Management Support Office, comprised of the Offices of Human Resources, Information Resource Management, Administration and Management and components of the Office of the Director.

## BIA Conference to be Held in New Orleans

The Fall BIA Self-Governance Conference will be on November 19-20 at a location to be named later. The key agenda topics will include: DOI Negotiated Rule-making, Trust Evaluations, and Non-BIA AFA's.

## Senate Hearing on Sovereign Immunity

The Senate Committee on Indian Affairs will hold a hearing on Sovereign Immunity, Tuesday, September 24, 1996 at 9: a.m.

This hearing, called by Senator Daniel Inouye is a result of an agreement between Senator Inouye and Senator Slade Gorton. Gorton agreed to strike the highly controversial section 329 from the Appropriations bill if Senator Inouye would agree to hold Senate hearings on the issue.

Senator Gorton introduced section 329, commonly referred to as the Lummi rider, in an attempt to severely limit the sovereign powers of a Tribe over its reservation lands. In this case, Lummi and a housing development on the Lummi reservation were at odds over an expansion of the housing development's water system. The Lummi Tribe felt the expansion would create environmental problems to the fragile aquifer of the area and exercised their sovereign right in the denial of the expansion. Congressman Jack Metcalf, a long-time opponent of Tribal rights, joined with Senator Gorton in their latest attack on Tribal sovereignty.

While Senator Gorton will not divulge his witness list, his staff has said they will focus on "Sovereign Immunity" and possibly attempt to expand into "Civil Jurisdiction in Indian Country." His witness list is expected to include State Attorney Generals, lawyers, historians, and non-Indians occupying fee land within the reservations. This attempt by Senator Gorton is the latest in a long string of efforts to diminish or completely abrogate the Treaty rights of Washington State Tribes and, in turn, all American Indian Tribes.



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Self-Governance is a Tribally driven initiative intended to provide Tribal governments more control over their own destinies. The project fosters the shaping of a "new partnership" between Tribal governments and the government of the United States. We believe that excellence in related communication and education is fundamental to the achievement of these goals.

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Indian Affairs' Indian Service Population and Labor Force Estimates Report.

**Contract Support Funds**

1. Current Rate - Each Tribe would receive a permanent one-time transfer of Contract Support funds to their TPA based on the current year's Contract Support rate, as negotiated with the Office of the Inspector General.

2. Three-year Average - Each Tribe would receive a one-time transfer of funds based on the three-year average of their Contract Support rate.


**Housing Improvement Program (HIP) Funds**

1. \$20,000 Base plus Percentage of HIP Eligible Population - Each Tribe would receive a \$20,000 base plus a percentage of the remaining funds based on the total population within the four categories of the 1993 BIA Service Population and Labor Force Estimate report which fall within any the following categories: 1) over 65; 2) unable to work; 3) unemployed; 4) earning less than \$7,000 per year.

2. \$10,000 Base plus Percentage of HIP Eligible Population - The same calculation as the formula above except the base would be \$10,000 instead of \$20,000.

Comments should be sent to the BIA Office of Self-Governance. All Tribal leaders are highly encouraged to comment. The notice says the selection of distribution methodologies will be based on broad-based Tribal support from the majority of areas. It is important to note, that the notice clearly states that widespread support in one or two areas for one option over another could constitute a majority of Tribes; however, that alternative will not automatically be implemented unless it receives majority support in other areas as well.

It is important that the experiences of all Self-Governance Tribes regarding the trust evaluation process be shared so that every opportunity is afforded to ensure that the trust evaluation process is meaningful for both the Tribes and the United States. Trust evaluations will be discussed during the upcoming Self-Governance Conference in November. The Hoopa Tribe will also provide information during the conference regarding their trust evaluation experiences.

The OAIT has used their process to conduct a number of FY 1995 trust evaluations. It is expected that both Tribal and Department representatives will be presenting information about the trust evaluation process during the upcoming conference. 

## Tribal Self-Governance Sovereign Nations

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